

TOWN OF LAMOINE

**Minutes of Planning Board Meeting**

**June 11, 2014**

**Lamoine Consolidated School**

Planning Board Members

Present: Holt, Bamman, Gallagher, Donaldson, Tadema-Wielandt,, Fowler  
(alt)

Code Enforcement Officer

Present: M. Jordan

Members of the Public

S. Salisbury, E. Bearor, M. Keene and partner

Members of the Press

1. Chair Holt called the meeting to order at 7 p.m.

2. Consideration of [Minutes](#)

Several amendments to the draft minutes of the May 27, 2014 meeting were made. Bamman (Tadema-Wielandt) moved to accept them as amended.

Voted to approve 5-0.

Barrister Bearor noted that he had found inaccuracies in the May 13, 2014 minutes. He was invited to submit these to the secretary.

3. [Code Enforcement Officer's](#) Report

a. [Permits Issued](#) – Members noted an increase in activity, including 4 new residences.

b. [Enforcement Actions](#) – Corrected notices of violation have been sent to the owners/operators of 9 gravel pits.

4. [Conservation Commission](#)

No report

5. Old Business

a. [Appeals Board decision on Doug Gott & Sons](#) appeal of the Planning Board's denial of a Site Plan permit (Map 3, Lots 6 & 8)

Holt reported that he had attended both meetings of the Appeals Board on this matter. The Appeals Board, according to Holt, found that the Planning Board had erred in its interpretation of the Site Plan Review Ordinance; the Appeals Board concluded that the proposed use is permissible and then developed four "findings of fact" to support this conclusion.

Holt's review of the Appeals Board's deliberations generated a number of observations that, in his opinion, made their decision a "poor" one. He distributed a draft memorandum stating these observations and suggesting that the Planning Board request the Appeals Board to reconsider its decision and amend its procedures. The Appeals Board, in Holt's view, did not limit its review to the materials upon which the Planning Board based its decision, introduced new criteria into its broader review of the case, and did not present "findings of fact" that were factual and relevant to Section J.1 of the SPR ordinance, and did not address the specific appeal language of the appellant or the Planning Board's stated reasons for denying the permit. (See attached copy of final memorandum, 6/12/14.)

Fowler and Bamman questioned whether we should take any action prior to receiving a written decision from the Appeals Board. Holt cited information from Maine Municipal Association (Becky Seele) stating that any request for reconsideration must be filed within 10 days of the date on which the decision was made (which would be 3 days from now).

It was suggested that the Board request the Town Attorney to review the procedures and conclusions of the Appeals Board to get a legal opinion about this matter. Holt read portions of the response he received from B. Seele (MMA) indicating that Appeals Board reviews are to be restricted to the materials in the possession of the Planning Board and that the Appeals Board findings need to clearly address the points that constitute the grounds for the appellant's appeal.

Donaldson (Tadema-Wielandt) moved that the Board contact the Appeals Board in writing requesting that they reconsider their decision and stating to them the reasons for this request that are outlined in Holt's draft. Bamman asked if Holt was "confident" about the 10-day window for taking action of this sort. He said he was. (Barrister Bearor voluntarily confirmed this point of law.) Tadema-Wielandt asked Bamman, who also attended the Appeals Board meetings, if he had "come away with the same impressions as [Holt]". Bamman responded, "Basically, yes". Holt pointed out that "we" could appeal the matter to Superior Court, but the town would then be put in a position of employing two lawyers to argue against one another. Donaldson wondered if the Board should meet again to discuss the matter once we received the written decision of the Appeals Board. It was pointed out that the Planning Board has 3 days to act. Holt recommended the Board members watch the DVD of the Appeals Board meeting. Vote on the motion: Affirmative 5 Negative 0.

Holt to compose memorandum to the Appeals Board based on current draft and send it to all members of that Board, to the Select Board, and to Stu.

b. Public hearing date for Doug Gott & Sons, Inc. gravel permit applications (Map 1 Lot 67-1, Map 1 Lot 70, Map 4 Lots 11 & 16): Confirmed for 6:30 p.m. on July 8, 2014 at the Lamoine Town Hall.

## 6. New Business

a. Planning Board member Jim Gallagher presented remarks to the Board explaining his decision to step down from the Board at the end of his current term, after eight years of service to the Town and Board. (See attached statement.)

b. Gravel Pit Application. Michael O. Keene (Map 4 Lot 41-A)

The Board undertook a completeness review of the Keene application. Holt appointed Fowler to serve as a voting member for this review, as Gallagher will be leaving the Board at the end of this month.

Much of the required information was found to be present. (See "Completeness Review" form.) The following information was not present or not sufficiently detailed:

Size of Pit – State acreage of the whole parcel. Then state acreage of the pit area, including where excavation, stockpiling, and other activities will occur in the next three years.

### Application Section 1. General Information

- h. provide copy of tax payment receipt to show taxes have been paid
- k. provide evidence of the Reclamation Escrow Account and, if possible, the company's "financial capacity"

### Application Section 2 Existing Conditions

- a(3) elevation contour lines need to extend 100 ft. beyond all boundaries of the parcel
- a(4) add widths of the two rights-of-way
- a(5) add arrows to the map showing direction of surface water flow
- a(8) describe in writing any of the listed conditions that are present within the parcel
- b. list all levels in "above sea level" numbers (not "below ground level")
- c. state in writing that no documentation of water quality has been done

### Application Section 3 Proposed Pit

- a. clearly draw this portion of the parcel on the map and state its acreage
- b. provide this information on the boundaries of the "portion" in (a) above
- d. provide this (again!)

### Application Section 4 Proposed Operations

- d. clearly mark this on the map and describe why it is not what you proposed three years ago
- g. add to the written application information: "None"
- h. add to the written application information: "None proposed"

i. add to the written application information: "None"

Application #11 Add a written description of your plan

Application #13 Provide copy of state license and any other licenses

During the review, the Board and Mr. Keene discussed:

a. Water level measurement: Mr. Keene has two "monitoring wells" and stated that his entire pit lies over ledge. He sought clarification about the "groundwater level": is it above the ledge? Or below? The Board reinforced the goal of the ordinance which is to determine where the groundwater level is so that extraction will remain separated from it. All agreed to examine this during the site walk. Keene will invite his engineer to join us.

b. Setbacks: Mr. Keene expressed concern that the 100' setback requirement appears to leave him with very little area to excavate. The Board discussed this and had several suggestions but indicated to Mr. Keene that he needs to identify clearly what he considers to be "the pit" area on the map.

Donaldson (Tadema-Wielandt) moved to find the application complete with the condition that the missing information be provided two weeks prior to the public hearing on this application. Holt recommended to Keene that he ask his engineer to provide information on the location of the water table and the probability of hazards to the groundwater, given the fact that the pit seems to lie over ledge. Vote: Yes 5 No 0.

A site walk was scheduled for June 17 at 4:30 p.m.

Public hearing: July 8, 2014

**[NOTE: Subsequent to the meeting, Mr. Keene said his engineer would be unavailable until June 27, so these meetings will be rescheduled after that date.]**

7. Other Public Matters - None

8. Ordinance Matters

Donaldson distributed a draft "Annual Compliance Review of Gravel Extraction Operations". (See attached.) The draft was assembled in 2012 during the ordinance revision workshop process. The Board will need such a format for use by the CEO for the first annual review of permits issued under the revised Gravel Ordinance (ie. in September/October). Board members will review and come to the next meeting with suggestions.

9. Next Meetings:

Tuesday July 8, 2014 Public Hearing at 6:30; Meeting at 7:00.

Tuesday August 5, 2014

Tuesday September 2, 2014

The Board thanked Jim Gallagher for his service to the Planning Board and the Town of Lamoine.

10. Adjourned at 9:15 p.m.

Respectfully Submitted,

Gordon Donaldson, Secretary

Electronic Attachments:

- Gallagher Remarks 6-11-14.pdf
- Appeals Board reconsideration request 6-12-14.pdf
- Grav Ord AnnCompliance Draft 6-11-14.doc